



City of Carmel

Board of Zoning Appeals

June 6, 2002

The continuation of the May 28, 2002, Regular Meeting was held at 7:00 PM in the Council Chambers of Carmel City Hall on June 6, 2002. Those members in attendance: Michael Mohr, Earlene Plavchak, and Pat Rice, thereby establishing a quorum.

Department of Community Services Staff in attendance: Director Michael Hollibaugh; Laurence Lillig, and Jeff Kendall, Building Commissioner. John Molitor, Legal Counsel, was also present.

John Molitor reported he had drafted some proposed Findings of Fact of decisions from the last meeting. However, he had equipment problems and was not able to print. He will try to print from disk, using a printer in City Hall and distribute later tonight.

Laurence Lillig reported Item 2j, V-17-02 withdrawn; Items 3-6j, V-18-02 through V-21-02 tabled to July 22, 2002; Items 31-43j V-54-02 through V-66-02, are tabled pending ADLS approval from the Plan Commission; Items 44-64j, V-67-02 through V-87-02, are tabled to the June 24, 2002, agenda pending ALDS approval from the Plan Commission.

J. Public Hearing:

Item 1j, an administrative item will be moved to back of agenda.

2j. *This Item was Withdrawn at the May 28, 2002, meeting of the Board.*

Smokey Ridge, Section 3, Lot 63 (V-17-02)

Petitioner seeks approval of a Developmental Standards Variance of *Section 25.9: Drainage* in order to allow a swimming pool to encroach three (3) feet into a platted Drainage Easement.

The site is located at 13719 Smokey Ridge Overlook. The site is zoned R-1/Residence. Filed by Marjorie A. Mikels of Pools of Fun for Thomas A. & Melinda Endicott.

3-4j. *Tabled to the July 22, 2002, agenda at Petitioner's request.*

Lakes at Hazel Dell, Section 1, Common Area 4a (V-18-02; V-19-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-18-02 §25.7.02-1(b): *Number & Type* 2 Subdivision Signs

V-19-02 §25.7.02-1(b): *Number & Type* unmatched Subdivision Signs

The site is located on the southwest corner of West Dellfield Boulevard and Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Drees Homes.

5-6j. *Tabled to the July 22, 2002, agenda at Petitioner's request.*

Lakes at Hazel Dell, Section 1, Common Area 6 (V-20-02; V-21-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-20-02	§25.7.02-1(b): Number & Type	2 Subdivision Signs
V-21-02	§25.7.02-1(b): Number & Type	unmatched Subdivision Signs

The site is located on the northeast corner of East Dellfield Boulevard and Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Drees Homes.

7j. **St. Peter's United Church of Christ (V-28-02)**

Petitioner seeks approval of a Developmental Standards Variance of *Section 27.3.2* in order to forego the installation of perimeter parking lot curbing.

The site is located at 3106 East Carmel Drive. The site is zoned R-1/Residence within the State Highway 431/Keystone Avenue Overlay Zone.

Filed by David R. Barnes of Weihe Engineering for St. Peter's United Church of Christ.

Present for Petitioner: Dave Barnes, Weihe Engineers, 10505 North College, Indianapolis, IN 46280. Petitioner is requesting to eliminate curbing on the perimeter of the proposed parking lot for St. Peters United Christ Church. Curbing would take place within the entrance, on all the islands and the three (3) small areas at the south end of this track around some memorial trees. Sidewalk would be on the entire interior and proposed church building. Shrubs and trees will be placed around the entire perimeter for safety. Parking lot will be graded to drain to inlets within the parking lot. The entrance has been moved per the Carmel's Engineer's Office. Approval has been received for ADLS from the Plan Commission.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Department Recommendation: Favorable consideration. Laurence Lillig stated conditions were met in the sight plan presented tonight.

The public hearing was closed.

Earlene Plavchak moved for approval of **St. Peter's United Church of Christ (V-28-02)**. The motion was seconded by Pat Rice and **APPROVED 3-0**.

8j. Carmel/Clay Schools - Orchard Park, Lot 78 and Block B - Orchard Park Elementary (V-29-02)

Petitioner seeks approval of a Developmental Standards Variance of *Section 25.7.02-5: Institutional Uses; (b): Number & Type* in order to establish two (2) Institutional Signs. The site is located at 10404 Orchard Park South Drive. The site is zoned R-1/Residence. Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Present for Petitioner: Chris Hinkle, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN 46240

The Variances are for the number of signs, sign areas and sizes for 3 existing elementary schools. Signs are already in place. Variances would allow signs to stay in place.

Mr. Mohr questioned if 8j through 15j needed to be heard separately.

Laurence Lillig recommended entering all three elementary schools into the record.

Chris Hinkle stated all variances for the three elementary schools were the same kind.

9-10j. Carmel/Clay Schools - Towne Meadow Elementary (V-30-02; V-31-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-30-02 §25.7.01-2 22.22-square-foot traffic directional sign #1

V-31-02 §25.7.01-2 22.22-square-foot traffic directional sign #2

The site is located at 10850 Towne Road. The site is zoned S-1/Residence - Very Low Density.

Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

11-15j. Carmel/Clay Schools - Cherry Tree Elementary (V-32-02; V-33-02; V-34-02; V-35-02; V-36-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-32-02 §25.7.01-2 13.24-square-foot traffic directional sign #1

V-33-02 §25.7.01-2 4.28-square-foot traffic directional sign #2

V-34-02 §25.7.01-2 6.82-square-foot traffic directional sign #3

V-35-02 §25.7.01-2 6.82-square-foot traffic directional sign #4

V-36-02 §25.7.01-2 51.75-square-foot institutional sign #5

The site is located at 13989 Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Department Recommendation: Favorable consideration. Laurence Lillig recommended the Board suspend the rules in order to take a single vote on each school, so that would be three votes.

The public hearing was closed.

Earlene Plavchak moved to suspend the rules. The motion was seconded by Pat Rice and **APPROVED 3-0.**

Earlene Plavchak moved to approve V-29-02. The motion was seconded by Pat Rice.

Earlene Plavchak moved to approve V-30-02 and V-31-02. The motion was seconded by Pat Rice.

Earlene Plavchak moved to approve V-32-02, V-33-02, V-34-02, V-35-02, V-36-02. The motion was seconded by Pat Rice.

V-29-02 was **APPROVED 3-0.**

V-30-02 and V-31-02 were **APPROVE 3-0.**

V-32-02 through V-36-02 were **APPROVED 3-0.**

16j. **Appel Heating & Air Conditioning (V-37-02)**

Petitioner seeks approval of a Developmental Standards Variance of *Section 26.4.5(c)* in order to reduce the side perimeter bufferyards on the north and south property lines to zero (0) feet.

The site is located at 530 South Range Line Road. The site is zoned I-1/Industrial.

Filed by Adam L. DeHart of Keeler-Webb Associates for Appel Heating & Air Conditioning.

Present for Petitioner: Adam DeHart, Project Manager, Keeler Webb Associates, 486 Gradle Drive, Carmel, IN 46032.

Also in attendance, Ken Appel, 530 S. Range Line Road, Carmel, IN 46032

The existing building has two (2) curb cuts off Range Line Road, asphalt parking in front of the building with little or no green space. These industrial sites are long and narrow. This site is 100 feet wide by 350 feet deep. There is asphalt to the property line. Many of the businesses have shared access and parking next door to each other for 50 years or so. There is a practical difficulty with the ordinance for this growing business. The business needs increased office space. Building addition is planned on the east side, which would be facing the street and relocating all parking to the rear of the site. They intend to comply with the zoning ordinance in all matters with the exception of being able to provide a 5 feet buffer yard between the neighbors on the north and the south. The parking that is provided is for employees. They have met with the Department regarding the radius of the entrances and the plans have been revised to meet the approval of the City Engineer. They will provide an ingress/egress access easement along the south property line from the right-of-way to the rear of the building, so that in the future the number of entrances can be reduced along Range Line Road. This ingress/egress easement would make shared access legal between them and all future owners.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Department Recommendation: Favorable consideration. Laurence Lillig gave favorable recommendation with the following conditions. First, revising the curb radius on each drive per the direction of the City Engineer and the revised design would be reviewed and approved by the Board of Public Works. Second, that the applicant provide a cross-access easement within the area south of the proposed building. This area shall run, at a minimum, between the right-of-way of Range Line Road (to include the entire drive) and the rear of the existing building.

Laurence Lillig stated to make the conditions part of the motion and they will be in minutes.

Public hearing closed.

Pat Rice moved for approval with conditions of **Appel Heating & Air Conditioning (V-37-02)**. The motion was seconded by Earlene Plavchak and **APPROVED 3-0**.

17-28j. Carmel/Clay Schools - New Middle School (SU-38-02; V-39-02; V-40-02; V-41-02; V-42-02; V-43-02; V-44-02; V-45-02; V-46-02; V-47-02; V-48-02; V-49-02)

Petitioner seeks Special Use approval in order to establish a middle school on 159.823± acres.

Petitioner also seeks approval of the following Developmental Standards Variances:

<i>V-39-02</i>	<i>§5.4.1: Maximum Height</i>	45' 4" principal building height
<i>V-40-02</i>	<i>§25.7.01-2</i>	15.17-square-foot traffic directional sign A
<i>V-41-02</i>	<i>§25.7.01-2</i>	3' 3" traffic directional sign A
<i>V-42-02</i>	<i>§25.7.01-2</i>	13.42-square-foot traffic directional sign B
<i>V-43-02</i>	<i>§25.7.01-2</i>	3' 3" traffic directional sign B
<i>V-44-02</i>	<i>§25.7.01-2</i>	12.55-square-foot traffic directional sign C
<i>V-45-02</i>	<i>§25.7.01-2</i>	3' 3" traffic directional sign C
<i>V-46-02</i>	<i>§25.7.02-5(b)(i)</i>	three (3) institutional signs
<i>V-47-02</i>	<i>§25.7.02-5(c)(i)</i>	93.0-square-foot east wall institutional sign
<i>V-48-02</i>	<i>§25.7.02-5(c)(ii)</i>	24-square-foot changeable copy
<i>V-49-02</i>	<i>§25.7.02-5(d)</i>	6' 2" institutional ground sign

The site is located on the southeast corner of West 126th Street and Shelborne Road. The site is zoned S-1/Residence/Estate.

Filed by Jeff Bolinger of Fanning/Howey Associates for the Carmel/Clay School Corporation.

Present for Petitioner: Bill Payne, Fanning Howey Associates, 9025 North River Road, Indianapolis, IN 46240.

The new middle school would be located at 126th Street and Shelborne Road. The work will occur to the north and west of the Brindle ditch to take advantage of existing large mature trees. An internal access drive will serve the new middle school and future facilities that are not part of this application. Those facilities would be the new Collegewood Elementary school to the south of this school and some future bus storage. East of this drive will be some soccer fields that are currently being displaced. The full-service middle school is approximately 250,000 square feet. It will accommodate 1200 students in grades 6-8. Parking areas to the north and east will be for visitors, student drop off and bus queuing. The internal access drive was coordinated through the

Department of Community Services so that it would align specifically with future development to the north. A portion of this internal drive will be bid as an alternative bid, to be added in the future as budget funds allow, facilitating access to some of the outdoor activity fields.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Department Report: Favorable consideration. Laurence Lillig stated the petitioner needs to meet conditions set by Technical Advisory Committee. Most of these are already shown in packet drawings.

Name of the new school is unknown at this time.

Pat Rice moved for approval with conditions **Carmel/Clay Schools - New Middle School (SU-38-02)**. The motion was seconded by Earlene Plavchak and **APPROVED 3-0**.

Laurence Lillig suggested the rules be suspended to vote on all the Variances in a single motion.

Pat Rice moved to suspend the rules. The motion was seconded by Earlene Plavchak and **APPROVED 3-0**.

Rice moved for approval with conditions **Carmel/Clay Schools - New Middle School (V-39-02; V-40-02; V-41-02; V-42-02; V-43-02; V-44-02; V-45-02; V-46-02; V-47-02; V-48-02; V-49-02)**. The motion was seconded by Earlene Plavchak and **APPROVED 3-0**.

29-30j. Newark Addition, Lots 1 - 4(part) - Mohawk Landing (V-50-02; V-51-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-50-02 §25.7.02-11(d)(i) 10' center identification height

V-51-02 §25.7.02-11(g)(i) center identification copy

The site is located on the southeast corner of City Center Drive and South Range Line Road. The site is zoned B-7/Business.

Filed by Paul G. Reis of Drewry Simmons Pitts & Vornehm for the 5254 Tivoli Partnership and Kosene Mohawk, LLC.

Present for Petitioner: Paul Reis, attorney for 5254 Tivoli Partnership & Mohawk Kosene LLC, 5013 Buckeye Court, Carmel. Mr. Reis presented updated renderings of sign approved by ADLS at the Special Studies Committee of the Plan Commission. The first variance is to allow the ground sign to be 10 feet instead of the maximum allowable height of 6 feet. The second variance is to allow tenant identification copy on a Center identification sign. This particular Center has a practical difficulty in that the intersection of Range Line Road and 126th Street was improved by the City and at that time the existing Center identification sign was removed. The grade of the road was altered and raised about 3 feet above the grade of the parking lot and a 44 inch railing was installed. The railing is used to advertise civic events with banners that further block the visibility of the Center. The proposed sign will be approximately six and one-half feet above the top of the railing. New rendering with dimensions were entered as part of the record.

The sign will not interfere with existing rights-of-way nor the vision clearance triangle for motorists. Because of the grade difference, this sign will not appear as different from the other signs along Range Line Road. Without this increased height, it would not be visible.

The second variance will allow Tenant Identification on this sign. The tenants in the back portion of the Center do not have wall signage. This will not create excessive signage, because this sign will be used for tenants with no signage.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Department Report: Favorable consideration. Laurence Lillig requested the records state the sign for Docket V-50-02 will be 10 feet 4 ½ inches rather than the 10 feet stated in the variance. Docket V-51-02 is favorable with conditions already committed at the Plan Commission: 1) tenant signs be limited to those tenants who do not have façade space available to them; 2) the ground sign currently located within the site be removed.

Mr. Mohr questioned if the Asian Mart is part of the Center. The truck cannot be present all the times because that constitutes signage.

Laurence Lillig stated a new ordinance, A-366, was adopted in November to address vehicle signage. The truck needs to be behind the front line of the building. However, none of the Center parking meets that requirement. An appropriate location of the truck will need to be found.

Earlene Plavchak asked if this is a three-sided sign.

Mr. Reis stated one will face Range Line Road, a second will face 126th Street and the third side will be blank and face into the Center.

Mrs. Rice asked if that ordinance was in effect.

Laurence Lillig stated the ordinance, Z-366, took effect in November. Generally the truck needs to be behind the front line of the building, however, none of their parking meets that requirement. It will need to be discussed what will be the appropriate location of truck.

Pat Rice moved for approval of **Newark Addition, Lots 1 - 4(part) - Mohawk Landing (V-50-02)** with the conditions of a 10 feet 4 ½ inches sign and the removal of the Asian Mart truck. The motion was seconded by Earlene Plavchak and **APPROVED 3-0.**

Earlene Plavchak moved for approval of **Newark Addition, Lots 1 - 4(part) - Mohawk Landing (V-51-02)** with conditions stated by the Department of Community Services. The motion was seconded by Pat Rice and **APPROVED 3-0.**

33-45j. *Tabled to the June 24, 2002, agenda pending ADLS approval.*

Carmax Auto Superstores (V-54-02; V-55-02; V-56-02; V-57-02; V-58-02; V-59-02; V-60-02; V-61-02; V-62-02; V-63-02; V-64-02; V-65-02; V-66-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-54-02	§14.6: Landscaping Requirements	15' north and east bufferyards
V-55-02	§25.7.01-2	8' traffic directional sign E1
V-56-02	§25.7.01-2	4-square-foot traffic directional sign E1
V-57-02	§25.7.01-2	8' traffic directional sign E2
V-58-02	§25.7.01-2	4-square-foot traffic directional sign E2
V-59-02	§25.7.02-8(b)(i)	five (5) identification signs (A, B, B1, C, D)
V-60-02	§25.7.02-8(b)(ii)	three (3) id signs oriented east (B, C, D)
V-61-02	§25.7.02-8(c)	193-square-foot wall identification sign A
V-62-02	§25.7.02-8(c)	193-square-foot wall identification sign C
V-63-02	§25.7.02-8(c)	78.33-square-foot ground identification sign B
V-64-02	§25.7.02-8(c)	78.33-square-foot ground identification sign B1
V-65-02	§25.7.02-8(d)	8' ground identification sign B
V-66-02	§25.7.02-8(d)	12' 3½" ground identification sign B1

The site is located on the northwest corner of East 96th Street and Gray Road. The site is zoned B-3/Business.

Filed by E. Davis Coots of Coots Henke & Wheeler for Carmax Auto Superstores, Inc.

46-66j. *Tabled to the June 24, 2002, agenda pending ADLS approval.*

St. Vincent's Carmel Hospital (V-67-02; V-68-02; V-69-02; V-70-02; V-71-02; V-72-02; V-73-02; V-74-02; V-75-02; V-76-02; V-77-02; V-78-02; V-79-02; V-80-02; V-81-02; V-82-02; V-83-02; V-84-02; V-85-02; V-86-02; V-87-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-67-02	§25.7.01-2	39-square-foot "EMERGENCY" TDS (20-1)
V-68-02	§25.7.01-2	11.07-square-foot "Ambulance Exit Only" TDS (20-4)
V-69-02	§25.7.01-2	11.07-square-foot "Ambulance Entrance" TDS (20-5)
V-70-02	§25.7.01-2	14.5-square-foot "Main Entrance" TDS (25-1)
V-71-02	§25.7.01-2	10.94-square-foot "Emergency" TDS (25-2)
V-72-02	§25.7.01-2	forty-one (41) 4-square-foot section TDS (30-#)
V-73-02	§25.7.01-2	ten (10) 17.25-square-foot director TDS (32-a)
V-74-02	§25.7.01-2	ten (10) 5' 2" director TDS (32-a)
V-75-02	§25.7.01-2	ten (10) 14.06-square-foot director TDS (32-b)
V-76-02	§25.7.01-2	ten (10) 4'6" director TDS (32-b)
V-77-02	§25.7.01-2	five (5) 4.75-square-foot bldg entrance id # TDS (22-#)
V-78-02	§25.7.02-5(b)(i)	eight (8) institutional signs
V-79-02	§25.7.02-5(c)(i)	70.06-square-foot institutional sign (10-1)
V-80-02	§25.7.02-5(c)(i)	70.06-square-foot institutional sign (11-1)
V-81-02	§25.7.02-5(c)(i)	77.7-square-foot institutional sign (12-1)
V-82-02	§25.7.02-5(c)(i)	77.7-square-foot institutional sign (12-2)
V-83-02	§25.7.02-5(c)(i)	144-square-foot institutional sign (20-2)
V-84-02	§25.7.02-5(d)	5' 4" institutional sign (10-1)
V-85-02	§25.7.02-5(d)	5' 4" institutional sign (11-1)
V-86-02	§25.7.02-5(d)	8' 9" institutional sign (12-1)

V-87-02 §25.7.02-5(d) 8' 9" institutional sign (12-2)

The site is located at 13500 North Meridian Street. The site is zoned B-6/Business within the US 31/Meridian Street Overlay Zone.

Filed by Becky R. Feigh of BSA Design for St Vincent Hospital & Health Care Center, Inc.

67-68j. Little Farms Addition, Lot 46 (V-89-02; V-90-02)

Petitioner seeks approval of the following Developmental Standards Variances:

V-89-02 §25.9: *Drainage* accessory bldg encroaching in drainage easement

V-90-02 §25.1.1(B)(3)(b)(i)(b) accessory building setback

The site is located at 10401 Ethel Drive. The site is zoned R-1/Residence and R-3/Residence within the Home Place District Overlay Zone.

Filed by Timothy M. & Melanie Rae Brower.

Present for Petitioner: Ken Nissley, 12063 Old Stone Drive, Carmel, friend of the Browsers, who could not attend this meeting because of National Guard duty.

Ethel Drive is on the west edge of the lot and the Monon Greenway is along the east. There is a slope from west to east that allows pooling of surface water. The original home was built in the 1940's with a detached garage and a cinderblock out building. Renovations in the 1970's connected the home with the garage and added some additional indoor plumbing. The out building is presenting an encroachment. The cinder block accessory building on a foundation makes relocation not practical in a cost-effective manner. Therefore, they are requesting a suspension of the rules.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Department Report: Laurence Lillig reported favorable consideration for both variances.

Pat Rice moved for approval of **Little Farms Addition, Lot 46 (V-89-02; V-90-02)**. The motion was seconded by Earlene Plavchak.

Laurence Lillig noted the rules would need to be suspended.

Pat Rice withdrew the motion. Earlene Plavchak withdrew the second.

Pat Rice moved to suspend the rules. The motion was seconded by Earlene Plavchak and **APPROVED 3-0**.

Pat Rice moved for approval of **Little Farms Addition, Lot 46 (V-89-02; V-90-02)**. The motion was seconded by Earlene Plavchak and **APPROVED 3-0**.

1j. **WTF - Sprint Spectrum (A-97-01)**

Appellant (an Interested Party) wishes to appeal the decision of the Director regarding the collocation of a WTF antenna on an existing private radio tower.

The site is located at 1388 Queen's Way. The site is zoned S-1/Residence – Very Low Density.

Filed by J. Taggart Birge of Bose McKinney & Evans for Richard Deer.

Present for Appellant: Taggart Birge with offices at 600 East 96th Street; Steve Granner, Planner at Bose McKinney & Evans; Mr. Flannigan, President of Queen's Way Homeowners Association; Nancy Irsay and Richard Deer who are interested adjacent property owners. They are here for revocation of a permit that has already been revoked.

Procedural History:

June 15, 2001, the Director of the Department of Community Services issued a permit to allow Sprint to construct an equipment shelter, extend a driveway, and attach an antenna to a private radio tower to provide cellular services in Hamilton County.

August 6, 2001, Sprint began construction on the project, 52 days after permit was issued.

August 15, 2001, Mr. Deer filed an appeal objecting the Director's initial refusal to revoke the building permit.

August 23, 2001, the Director revoked the permit on grounds different from the appeal. The Director revoked the permit on the grounds that the equipment shelter should have been subdivided from the larger tract and that the subdivision of the tract should have been submitted for plat approval.

September 24, 2001, Sprint filed an appeal of the Director's decision to revoke the permit.

November 15, 2001, motion was filed to dismiss Sprint's appeal on the grounds it was untimely under Section 30.1 of the ordinance.

November 26, 2001, BZA voted that Sprint had failed to timely file its appeal.

December 21 2001, Sprint filed for a writ of certiorari in front of the Hamilton County Circuit Court, which was granted.

June 13 2002, the Hamilton County Circuit Court will hear Sprint's lawsuit against the BZA regarding this body's 5-0 vote that Sprint failed to timely file its appeal.

Tonight is to discuss the merits of the appeal filed August 15, 2001. The subject property is in S-1 zoning. Every improvement is for residential purposes, in keeping with rural characteristics. Sprint is not in keeping with S-1 purpose and intent. According to Sprint, Section 5.1 is applicable if antenna is collocated on existing tower or pre-approved tower. How can Sprint collocate their antenna on an amateur radio station antenna, which by definition, is not an antenna for collocating?

The part of the ordinance that is applicable is Section 5.2, Special Uses. An antenna on or within a structure other than a tower must come before BZA to obtain special use approval.

A one hundred thirty (130) foot tower is now on site. Section 5.3.7 permits private radio and television reception and transmitting towers and antennas. Today that tower, which was built in 1987, would not be allowed. It is a non-conforming use, it is grandfathered. Effective July 1997, any tower over 15 feet in a residential area must obtain special exception prior to its construction.

The tower will allow Sprint to serve customers and general public in the area. Such commercial uses are not private and should not be permitted without public review by the BZA for Special Use And Special Variance.

Some questions for the Board to consider: Mr. Zamber's improvement is an accessory building. How can it be an accessory use to the residential building? The use of a non-conforming tower not be substantially altered. Sprint has spent \$400,000. How can this not substantially alter use of the property? It is clearly a commercial intrusion. This appeal is asking the Board to require Sprint to come before the BZA Board for approval.

Mr. Mohr asked Laurence Lillig if same procedure is used since this is an administrative issue. Laurence Lillig stated the same procedure is used.

Remonstrance:

John Flannigan, 11100 Queen's Way Circle, President, Queen's Manor Neighborhood Association. The Association cannot understand how there can be a commercial intrusion into the neighborhood.

Nancy Irsay, 1303 W. 116th Street, resents commercial intrusion in this quiet neighborhood.

Opposition of appeal:

Representing Sprint Spectrum, LP. Richard Nickovich, 333 W. Wacker Drive, Chicago, IL
Thomas Bedsell, 201 N. Illinois Street, Indianapolis.

Sprint is the holder of the building permit that is the subject of Mr. Deer's appeal.

This is a simple matter of interpretation. The appeal tonight does not involve the Sprint appeal, that relates to a subdivision issue. Mr. Deer's appeal relates to the various zoning arguments. This issue is whether under the Carmel Zoning ordinance, Sprint's use is a Permitted Use for zoning purposes, as distinguished from a Special Use, as distinguished from a Special Exception, as distinguished from a Variance.

Mr. Nickovich gave an overview of Mr. Deer's arguments.

For a Permitted Use the Sprint antenna must be collocated with an existing antenna. Section 5.1.1, S-1 zoning district talks about an antenna, if collocated on an existing or previously approved tower. Section 5.2 provides a Special Use only if the antenna is visually integrated with

or camouflaged on or within a structure other than a tower. Section 5.1.1 is directly on point and Section 5.2 is irrelevant.

Section 5.3.7 is also irrelevant. Mr. Deer feels the existing tower is for private purposes and Sprint needs BZA approval to collocate. The matter is clearly governed by Section 5.1. It does not require the tower be of any particular type.

Sprint is not building a tower. Section 25.13 supports Sprint's argument. In Ordinance Z-320, any tower is deemed a non-conforming use.

So again, Section 5.1.1 an antenna, if collocated on an existing or previously approved tower, constitutes a Permitted Use. That is not only Sprint's interpretation, not only a very plain reading of the ordinance, but is also apparently the position of the staff. Mr. Deer's appeal was filed before the building permit revocation took place.

Ask respectfully to deny Mr. Deer's appeal.

Rebuttal:

Mr. Birge stated the definition of collocate is to set side-by-side. How can you collate with an antenna that by definition does not exist there? According to the Ordinance, the term does not include an amateur radio station antenna. That is what Mr. Zamber has. Since Section 5.1 does not apply you must turn to Section 5.2.

Request Sprint to come before this body for approval.

Director's Report: Mike Hollibaugh

Permit was issued consistent with the rules. There was an existing tower and antenna. Collocation tended to be an improvement from existing antenna. The profile would be reduced. The mechanical equipment would be within a brick structure that would be residential in nature and would be an improvement.

Questions:

Mrs. Rice: Can a cell antenna be located on something that is a nonconforming use without coming before the BZA?

Mike Hollibaugh: In the Department's opinion, yes, or we would not have issued the permit.

Mrs. Rice: It did not come before BZA like the Northview church.

Mike Hollibaugh: We spent a lot of time before issuing the permit with John Molitor, as to the wording of the ordinance. Deferred to Mr. Molitor.

Mr. Molitor: There is some ambiguity in use of words. You must interpret whether the addition of an antenna is going to substantially alter that non-conforming use.

Mrs. Rice: To her, collocate would be to come in to use with the same purpose. To come in with a new purpose is really to locate.

Mr. Molitor: Believes collocate in the industry is to locate next to something else, rather than by itself.

Mrs. Plavchak: How big is property?

Mike Hollibaugh: Approximately 5 acres.

Mrs. Plavchak: Where would the building be located?

Mr. Nickovich: It is close to the residential structures and will blend with the pool buildings.

Mrs. Plavchak: How much of the accessory building is visible from the property line?

Mr. Nickovich: There is an existing tree line of mature evergreens.

Mrs. Plavchak to Mr. Molitor: If churches Sprint, etc. come and request approval to attach an antenna to a church spire, how is that different from this ham radio tower?

Mr. Molitor: The ordinance sets up 3 tiers of permissions.

Permission #1: This is virtually absolute. If you already have a tower, you can add more antennae to that tower, assuming that tower is there legitimately.

Permission #2 There is an existing structure that is not a tower, church steeple, flagpole, tall office building, etc. Someone can get approval as a Special Use, which does not require the same level of findings of fact as a Special Exception.

The ordinance prefers to locate on an existing tower. If that is not possible, applicant should look for another tall structure and try to camouflage on that and not change the character of the structure.

Permission #3 is the Special Exception. The applicant can't find any existing tall structure and needs to build a new tower, asking for a Use Variance from normal residential use.

Mrs. Plavchak: The ham radio tower was built in 1987 and it is currently grandfathered. What happens if the owner sells, does the new owner have to tear down?

Mr. Molitor: If the property is abandoned for 6 months, the owner must remove the tower. The property rights go with property, not with the owner.

Mrs. Plavchak: Can new owner tear down the tower because they don't like it. Can Sprint force them to keep it?

Mr. Molitor: For Sprint to protect their property rights they may need to divide the property. He doesn't know arrangements the owner has with Sprint.

Mrs. Rice: This tower on this property is a radio tower. Is this structure adequate for Sprint to locate an antenna?

Mr. Molitor: Staff indicates it is.

Mrs. Rice: Public should have had a say in this. If they are going to alter this in order to locate their tower, it seems to be two different towers. This is nonconforming because it is not a tower for a cell antenna.

Mr. Molitor : Whether it is substantially altered is the question the Board needs to determine.

Mr. Mohr: It does seem tower is really being altered. Department and adjacent homeowners can look at it in two different ways. Public should have the opportunity to come before the Board and discuss it.

Mrs. Plavchak: Asked Sprint attorney to address property rights. Also, Crooked Stick Golf Course is working on approval for a tower in this vicinity. Is it as good as this site?

Mr. Nickovich: Sprint does have a lease with Mr. Zamber and it would survive him selling the property and would run with the land. The Crooked Stick Golf Course does not currently have a tower. Proposals by others would be the lowest tier of the ordinance and would require a Special Exception. Sprint does not see that as viable. It is AT&T's application and Sprint does not have an arrangement to collocate with AT&T. It is speculative and may never be built. Crooked Stick is more densely populated. Collocation with another antenna is not possible. Collocation on existing structure (power poles, etc.) does not change the use of the power pole, etc.

Mrs. Plavchak: Will this change the look of the existing structure?

Mr. Nickovich: Sprint will attach flush-mounted antennae on this tower and propose taking off existing arms. New antenna will be less visually obtrusive.

Mrs. Rice: You stated another location would be another group to protest. You were never required to appear, so the public did not get a chance to comment.

Mrs. Plavchak: Would it be a fair statement to say the intent of the cell tower ordinance which was argued over was to prefer using existing structures? Is this a semantic argument or an issue argument?

Mr. Molitor: It is fair to say when drafting the ordinance it was strongly preferred existing towers be used so as not to have proliferation of new towers. Secondly, they asked that phone companies try to camouflage them inside of a church or tall office building or power pole, etc. Thirdly, especially in residential areas, prefer not to ask for new tower unless they could not provide service otherwise. I don't think it is a semantic issue. In the issue of substantial alteration, you are being asked to interpret those words. We did not know this tower existed.

Mrs. Rice: You meant cell towers in the ordinance?

Mr. Molitor: It says any kind of tower. A water tower is exempt from the ordinance and owned by the municipality.

Mrs. Rice: Sprint is really going to construct a new tower and not collocate.

Mr. Mohr believes the public should have a right to hear and be heard.

Mrs. Plavchak thinks the spirit of the ordinance was to use suitable existing structures. As ugly as this tower is, it is there and has been there and approved to be there. It does fulfill the spirit of the cell tower ordinance. It might be better than it is now. Intent was to prohibit or prevent proliferation and use structure already out there.

Mrs. Rice: It should have come before the Board, and then we would have input into how it looks and what the neighbors think. It has not had that opportunity. It appears to be a second tier. It would not necessarily be turned down and the public could have input.

Mr. Mohr agreed with Mrs. Rice, that it should come before the full Board and the public for input.

Mike Hollibaugh appreciated the deliberations and believes the permit was lawfully issued.

Mrs. Plavchak asked if the petitioner would consider tabling for a month so the full Board could hear the discussion.

Mr. Mohr stated with only 3 members in attendance it must be an unanimous vote. The petitioner may ask to table the item, but it must be done before the item is heard.

Mr. Molitor stated if it is an indecisive vote, it is essentially tabled.

Public hearing closed.

Mrs. Rice moved to approve **WTF - Sprint Spectrum (A-97-01)**. The motion was seconded by Mrs. Plavchak and was **INDECISIVE 2 TO 1**, with Mrs. Plavchak casting the opposition vote.

This item is tabled to the June 24, 2002 agenda.

Mr. Mohr encouraged both sides to have as much information for the Board as possible before that meeting.

Charles Weinkauff joined the Board at 9:30 PM.

K. Old Business.

NONE

Discussion followed on the May 28, 2002 BZA meeting.

Mr. Weinkauff asked if there is any precedent for possibility of or a way to ever change a vote on a previous petition that was voted on?

Mr. Molitor had researched and found no precedent in Indiana that would seem to justify taking such action. If a vote was procured by fraud or mistake that would be grounds for overturning it.

Mr. Weinkauff publicly admitted he made a mistake on one of the Martin Marietta petitions, one only. Had he not been mistaken on the very first petition, his vote would have been different on that one petition only. That was the one to allow moving the existing facility to the east side of Hazel Dell Parkway. Mr. Mohr thought of that when he left the meeting and felt the petitioner was only going to move the plant if they got the other approvals.

Laurence Lillig pointed out that without the Special Use approval, Martin Marietta would have no reason to move the plant.

Mrs. Rice will work with Mr. Molitor on the Martin Marietta Findings of Fact.

L. New Business.

1L. Board to consider amendments to the Board of Zoning Appeals Rules of Procedure.

Five minute recess.

Discussion of the amendment followed. Mr. Molitor stated there are four (4) concepts. The first one adds two additional types of agenda items to the list that are not listed in the Rules of Procedure now even though they are types the staff already uses. The second deals with the filing deadline. It will be amended from noon to the end of the business day so it more closely reflects the trial rule and language the courts use. Paragraphs B and C are moving a sentence from one to other, breaking it out more step-by-step. Paragraph #3 covers publication of notices. Noblesville Daily Ledger is no longer The Daily Ledger and doesn't really circulate in Carmel/Clay. Plan Commission will just require publication in the Indianapolis Star legal notices and that is what is recommended for the BZA. State law requires public notice to general public, which subsidizes the newspaper industry. The fourth topic sets out the rules for having the proceedings before Hearing Officers. Plan Commission has already appointed each member of the BZA as a Hearing Officer. The Ordinance reads that only members of the BZA can be hearing officers. Our Ordinance allows only BZA members to be Hearing Officers and by State law they are appointed hearing officers by the Plan Commission. The hearings will be the first and second Thursdays of the month at 1:00 PM. Hearing Officers will serve on a rotation basis. A sentence will be added to the Rules that the Department Director shall establish a calendar subject to approval by the BZA. The only items on the agenda will be items with no objections to the petition by the Department. Copies are to be submitted to all members of the BZA ten (10) days before the hearing. Items can be withdrawn up to five (5) days before the hearing. Another sentence will be added to the Ordinance that each BZA member has authority to recommend the item be heard by the full BZA. A Hearing Officer can hear only Developmental Standards Variances (DSV). A petitioner can also ask to be heard before the full BZA board.

Mr. Molitor will type the changes into the amendments to the Board of Zoning Appeals Rules of Procedure and have it signed by the Director, Michael Hollibaugh, and Secretary, Connie Tingley. The amendment will go into effect immediately.

Mrs. Rice moved to approve the amendments to the Board of Zoning Appeals Rules of Procedure as amended. The motion was seconded by Mr. Weinkauff and APPROVED 4-0.

M. Adjourn.

Mrs. Rice moved the meeting be adjourned. The motion was seconded by Mr. Weinkauff and **APPROVED 4-0.**

Meeting was adjourned at 10:20 PM.

Michael Mohr, President

Connie Tingley, Secretary